

Before the
Federal Communications Commission
WASHINGTON, D.C. 20554

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In the Matter of)
)
Rulemaking to Amend Parts 1, 2, 21, and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency Band,)
to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)

File No. CC Docket No. 92-297

JOINT PETITION FOR LIMITED RECONSIDERATION

Microwave Services, Inc. ("MSI") and Digital Services Corporation ("DSC")
(collectively "Petitioners") by their attorneys, pursuant to Section 1.429 of the Commission's
rules, 47 C.F.R. §1.429, hereby jointly petition for limited reconsideration of a single aspect
of the First Report and Order in the above captioned proceeding.¹ Specifically, this petition
is limited solely to the issue of the designation of 500 MHz of spectrum at 18.8-19.3 GHz
for the non-geostationary, fixed satellite service ("NGSO/FSS") downlink. In support of this
Petition, Petitioners state as follows:

Background

On July 22, 1996 the Commission released the text of the *28 GHz Order*, designating
band segments in the 28 GHz band, i.e., 27.5-30.0 GHz for, *inter alia*, the uplink spectrum

¹See, Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to
Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency
Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed
Satellite Services, *First Report and Order and Fourth Notice of Proposed Rulemaking*, CC
Dkt. No. 92-297, FCC 96-311 (Released Jul. 22, 1996) ("*28 GHz Order*").

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for Fixed Satellite Service ("FSS") systems and corresponding downlink spectrum at 18 GHz, *i.e.*, 17.7-20.2 GHz.² To that end, the Commission designated 500 MHz of spectrum at 18.8-19.3 GHz for the NGSO/FSS downlink, correctly noting that this band is also allocated on a coequal basis to the Fixed Service ("FS")³, including the Digital Electronic Messaging Service ("DEMS"). It designated this full 500 MHz of spectrum domestically, even though the 1995 World Radiocommunication Conference (WRC-95) "froze" 100 MHz of this spectrum internationally, *i.e.*, 18.8-18.9 GHz, pending the completion of sharing studies between, *inter alia*, NGSO/FSS systems and terrestrial systems.

The Commission nevertheless unconditionally designated this full 500 MHz domestically for the NGSO/FSS downlink as there was nothing on the record before it to suggest that sharing between the coequal NGSO/FSS and the FS services in the 18 GHz band would be infeasible. Indeed, the Commission expressly stated that:

[W]hile there will be constraints imposed on NGSO/FSS subscriber terminals by fixed services in the 18.8-19.3 GHz band, there is no indication on the record that the single NGSO/FSS system proposed lacks sufficient flexibility to provide downlink capacity to correspond with the designated 500 MHz of uplink spectrum.⁴

The sole NGSO/FSS applicant before the Commission during the pendency of the 28 GHz proceeding was Teledesic Corporation. Teledesic actively participated in this

²See, 28 GHz Order at ¶ 42 and ¶ 77, respectively.

³See, 28 GHz Order at ¶ 81. See also, 47 C.F.R. §25.202(a)(1).

⁴See, 28 GHz Order at ¶ 23.

proceeding leading up to the release of the *28 GHz Order*, including submitting comments⁵ and reply comments⁶ on the Third Notice of Proposed Rulemaking ("Third NPRM") which specifically sought comments on any downlink issues of concern.⁷ As far as Petitioners can diligently ascertain, never once did Teledesic voice concern on the record regarding its ability to share the downlink spectrum on a coequal basis with the specific FS services for which this spectrum is also allocated and designated and for which licenses have been granted and stations are already in operation in accordance with applicable Commission rules. To the contrary, Teledesic expressed its support for the 500 MHz of downlink spectrum at 18.8-19.3 GHz.⁸

MSI and DSC each hold common carrier DEMS licenses in the 18 GHz band, of which numerous nodal stations are already in operation. No sooner had the Commission released the text of its *28 GHz Order*, did Teledesic then, for the first time, raise the issue that certain of the FS systems designated and licensed for use in the 18.8-19.3 GHz band,

⁵Teledesic Comments, CC Dkt. No. 92-297 (Third NPRM) (filed September 7, 1995)("Teledesic Comments").

⁶Teledesic Reply Comments, CC Dkt. No. 92-297 (Third NPRM)(filed October 10, 1995).

⁷*In the Matter of Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band to Reallocate the 29.5-30.0 GHz Frequency Band to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services and Suite 12 Group Petition for Pioneer's Preference*, CC Docket No. 92-297, 11 F.C.C. Rcd. 53 at page 78 (1995)("Third NPRM"). ("We also seek comment on any other issues concerning downlink operations which may affect the workability of the band segmentation plan.")

⁸Teledesic Comments at 21.

namely DEMS, would render it "unable to use the 18 GHz Band"⁹ and stating that coexistence with DEMS Systems in the 18 GHz band is "not feasible."¹⁰ As a result, Petitioners are interested parties pursuant to §1.429 of the rules with respect to submitting this petition and seeking the relief set forth herein.

Petitioners Request That The Commission Reconsider Its Designation Of the 500 MHz Of Spectrum At 18.8-19.3 GHz For The NGSO/FSS Downlink At This Time

The specific FS service for which the current NGSO/FSS applicant states it can not now coexist is DEMS. DEMS systems are designated and licensed in 100 MHz of spectrum in the 18 GHz band at 18.82-18.92 GHz, a portion of which lies within the 100 MHz of the NGSO/FSS downlink spectrum, *i.e.*, 18.8-18.9 GHz, which is frozen internationally until WRC-97 and which may never be designated internationally for the NGSO/FSS downlink. Based on Teledesic's recent claims of its inability to coexist with DEMS systems in the 18 GHz band, Petitioners believe it is necessary for the Commission to reconsider the 18 GHz designation for the NGSO/FSS downlink spectrum at this time until the results of the sharing studies which are occurring in preparation for the WRC-97 process are available, as well as the ongoing coordination efforts which are underway, domestically, between Teledesic and DEMS licensees are concluded. *Petitioners believe and continue to believe*

⁹See, Analysis of Potential Interference Between Non-Geostationary Fixed Satellite Service and DEMS in the 18.8 to 19.3 GHz Band (prepared Aug. 30, 1996). Teledesic submitted this study in support of its request for an administrative freeze on the acceptance and processing of 18 GHz DEMS applications, *see* Letter Dated September 3, 1996 from Scott Blake Harris to Michele Farquhar, Chief, Wireless Telecommunications Bureau and Don Gips, Chief, International Bureau, and again with its September 6, 1996 Consolidated Petition to Deny and Petition to Determine Status of Licenses.

¹⁰See, Letter dated August 23, 1996 from Scott Blake Harris and Mark A. Grannis to Michele Farquhar, Chief, Wireless Telecommunications Bureau.

*that the NGSO/FSS system as proposed by Teledesic in its application can coexist with DEMS systems through cooperative traditional frequency coordination.*¹¹ Teledesic apparently now believes otherwise, and this undermines the entire factual predicate that supported the Commission's 18 GHz downlink designation. The Commission must reconsider its decision in light of Teledesic's new position. Until Teledesic ceases to pursue its efforts to disrupt and impede the operations of existing DEMS licensees in the 18 GHz band, the Commission cannot designate this band for its downlink use.

Petitioners Meet The Test For Grant Of This Limited Petition For Reconsideration

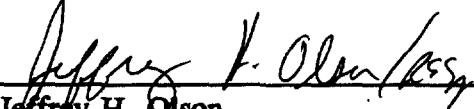
Pursuant to Section 1.429, 47 C.F.R. §1.429, Petitioners satisfy the conditions for grant of this petition set forth in Section 1.429(b). Specifically, the information which has recently come to light regarding Teledesic's present claims of incompatibility with DEMS systems was not made public until after the Commission released the *28 GHz Order* in July 1996. This information directly contradicts the positions Teledesic has taken over the past 2 1/2 years with respect to sharing the 18 GHz spectrum with FS services including the comments it submitted in response to the Commission's specific request for comment on the downlink issues in the 28 GHz proceeding.¹² Petitioners had no reason to oppose the Commission's NGSO/FSS downlink band plan prior to the release of the *28 GHz Order* as all information available to Petitioners regarding downlink sharing between FS and

¹¹Based on Teledesic's own representations Petitioners have never had reason prior to Teledesic's recent claims to raise concerns regarding the downlink designation to the Commission. See, e.g., Application of Teledesic Corporation for a Low Earth Orbit Satellite System in the Fixed Satellite Service (filed March 24, 1994) at p. 79.

¹²See, *Third NPRM* at ¶ 65.

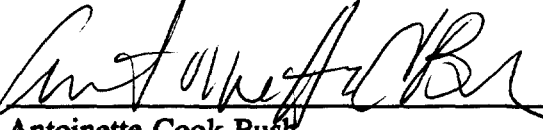
NGSO/FSS -- including the Teledesic proposed satellite system application and Teledesic's own representations in the 28 GHz proceeding and the WRC-95 and WRC-97 preparatory efforts -- indicated to Petitioners that compatible coexistence was (and is) feasible through frequency coordination. It is only Teledesic's recent claims of incompatibility that cause Petitioners to question the Commission's decision regarding the 18 GHz NGSO/FSS downlink designation. As a result, the Commission must reconsider this designation at this time until the compatibility issues are resolved.

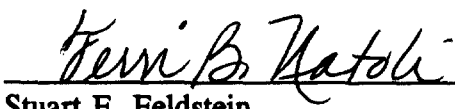
Wherefore, in view of the foregoing, Petitioners respectfully request that the Commission reconsider that portion of the 18 GHz downlink designation for NGSO/FSS systems addressed above.


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CERTIFICATE OF SERVICE

I, Victoria L. Hilbun certify that a copy of the foregoing "Joint Petition for Limited Reconsideration" was mailed, first-class postage prepaid, this 27th day of September, 1996 to each of the following:

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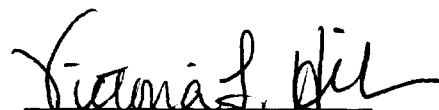
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